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Attorneys for Arizona Water Company

**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION  
OF ARIZONA WATER COMPANY, AN  
ARIZONA CORPORATION, FOR A  
DETERMINATION OF THE FAIR VALUE  
OF ITS UTILITY PLANT AND PROPERTY,  
AND FOR ADJUSTMENTS TO ITS RATES  
AND CHARGES FOR UTILITY SERVICE  
FURNISHED BY ITS WESTERN GROUP  
AND FOR CERTAIN RELATED  
APPROVALS.

DOCKET NO. W-01445A-10-0517

**ARIZONA WATER COMPANY'S  
RESPONSE TO STAFF'S LETTER OF  
DEFICIENCY**

Arizona Water Company, an Arizona corporation, hereby submits its response to the  
Utility Division Staff's January 7, 2011 letter of deficiency to Arizona Water Company (see  
Exhibit A attached hereto).

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of January, 2011.

ARIZONA WATER COMPANY

Arizona Corporation Commission  
**DOCKETED**

JAN 14 2011



By:

Robert W. Geake  
Vice President and General Counsel  
ARIZONA WATER COMPANY  
Post Office Box 29006  
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Arizona Water Company

5 An original and thirteen (13) copies of this Response was delivered this 14<sup>th</sup> day of January, 2011  
6 to:

7 Docketing Supervisor  
8 Docket Control Division  
9 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

10 A copy of this Response was delivered this 14<sup>th</sup> day of January, 2011 to:

11 Ms. Lyn Farmer  
12 Chief Administrative Law Judge  
Hearing Division  
13 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

14 Mr. Steve Olea, Director  
15 Utilities Division  
16 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

17 Ms. Janice Alward, Chief Counsel  
18 Legal Division  
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22 By:   
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## EXHIBIT A



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January 14, 2011

Mr. Steven M. Olea  
Director of Utilities Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007-2927

Re: IN THE MATTER OF THE APPLICATION OF ARIZONA WATER  
COMPANY FOR APPROVAL OF A RATE INCREASE (DOCKET NO.  
W-01445A-10-0517)

Dear Mr. Olea:

This letter responds to your letter dated January 7, 2011 to Mr. Robert W. Geake, Vice President and General Counsel of Arizona Water Company, regarding this case.

As detailed below, Arizona Water Company firmly believes that its December 29, 2010 Western Group Water Systems rate filing (the "Application") fully complies with the sufficiency requirements set forth in the Rate Case Management Rule, A.A.C. R14-2-103 (the "Rule"), and that the assertions and conclusions in your letter and actions taken by Staff are unwarranted under Commission Rules and Regulations and its historical practices and procedures.

Initially, it is important to note that there is no support in the Rule for Staff's position that Arizona Water Company's pro forma adjustments of the historical Test Year to reflect current rates is inappropriate. Nor is there any support in the Rule for Staff's position that the 2009 historical Test Year used by the Company in the Application employs "stale data" or otherwise fails to meet the requirements of the Rule. The Commission authorized the current rates in Decision No. 71845 as of July 1, 2010<sup>1</sup>. For these reasons, your unilateral declaration that the Application is "deficient," that "all associated schedules" are "invalid," and that the Staff may simply choose not to work further on the Application at this time are not only unjustified, but violate the expressly-stated time clock provisions of the Rule.

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<sup>1</sup> The Commission determined the current rates based on a test year ending December 31, 2007, not December 31, 2008 as stated in the January 7 letter

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St. Louis  
United Arab Emirates (Dubai)  
Washington, DC

And Bryan Cave,  
A Multinational Partnership,  
London

Contrary to the observations in your January 7 letter, the Rule does not contain a definition of "the most recent practical date available prior to the filing," and your letter provides no authority to support Staff's conclusion that the December 31, 2009 test year employed by the Company is not "the most practical date available." In fact, December 31, 2009 was the most recent recorded calendar year at the time the Application was filed. As Staff and the Commission are well aware, there are many prior rate cases for which sufficiency has been found that were filed near or beyond one year from the chosen test year.<sup>2</sup>

Moreover, the Rule contains no requirement, and Staff does not cite any authority for its conclusion, that the one-year historical test period must include 12 months' experience of actual data under the most current rates approved by the Commission. As Staff must be aware, there are dozens and dozens of rate cases in which applications have been deemed sufficient despite containing test years with far less than 12 months' worth of actual data under the most current rates.<sup>3</sup> In fact, in the December 22, 2010 meeting that you held with Arizona Water Company's officials before the Application was filed, you stated that the Staff would prefer to see a test year with six months of actual data under the most current rates, not 12 months. Again, the Rule does not provide for either time frame, or any specified time frame, to be controlling. As you acknowledge in your letter, pro forma adjustments are routine. The Rule provides for pro forma adjustments to be made to actual test year results and balances to obtain a more realistic relationship between revenues, expenses and rate base.

Section (B)(11)(g) of the Rule specifically contemplates a situation where a utility may file a second rate application even prior to the conclusion of a pending rate request, underscoring that the Staff is directed by the Rule to consider rate applications under rates that are not yet changed. Because the Rule allows for more than one rate filing (which obviously would not contain any rate experience under newly approved rates, let alone 12 months of experience), this section of the Rule would be rendered meaningless and unnecessary if a utility was required to wait a full 12 months following one rate change before it was permitted to file a second application.

In addition, case law does not support the conclusions in your January 7 letter. Not only is there no Arizona case of which we are aware that supports Staff's positions, many Arizona opinions actually support pro forma adjustments and the use of adjustments to historical test year figures to give effect to Commission-authorized rates as part of the Commission's obligation to set reasonable rates

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<sup>2</sup> See, e.g., *Picacho Peak Water Company*, Docket No. W-02351A-07-0686 (test year ending 11 1/2 months before application filing accepted as sufficient); *Chaparral City Water Company*, Docket No. W-02113A-07-0551 (test year ending 9 months earlier accepted as sufficient); *Arizona American Water Company*, Docket No. W-01303A-02-0908 (test year ending 11 1/2 months before application filing accepted as sufficient); *Arizona Water Company*, Docket No. W-01445A-00-0962 (test year ending 11 3/4 months earlier accepted as sufficient).

<sup>3</sup> See, e.g., *Arizona Public Service Company Rate Cases*, Decision No. 54247 (November 28, 1984)(no new rates in accepted test year); Decision No. 67744 (December 6, 1991)(same); Decision No. 55118 (July 24, 1986)(same as to original sufficiency finding; later updated to include only one month of new rates); Decision No. 55228 (October 9, 1986)(same).

and charges for public service corporations. See, e.g., *Arizona Corporation Commission v. Arizona Public Service Co.*, 113 Ariz. 368, 371, 555 P.2d 326, 329 ("it is obvious that the Commission in its discretion can consider matters subsequent to the historic year, bearing in mind that all parties are entitled to a reasonable opportunity to rebut evidence presented"); *Arizona Corporation Commission v. Citizens Utilities Co.*, 120 Ariz. 184, 189, 584 P.2d 1175, 1180 (1978) ("when the Commission itself, in defense of its rate making, enters the misty area of prognostication, it must be prepared to accept what the sunshine of experience reveals as to the validity of those forecasts. We find no error in the trial court's admission of post-Test Year or post-Commission date of hearing evidence in this area").

The sweeping conclusions in the January 7 letter that the test year issues render the entire Application deficient and all associated schedules invalid, and justify the Staff unilaterally ceasing any work whatsoever on the Application, are clearly not supportable. Not only is there no Rule or law permitting the Staff to do so, the terms of the Rule itself compel the Staff to file a notice of deficiency, including an explanation of any of the defects Staff finds in the materials filed with the Application, within 30 days of the utility's filing. See Section (B)(7) of the Rule. Clearly the Rule calls on Staff to review the filing to make sure it is sufficient in form and content, but it does not authorize Staff to summarily disqualify a filing based on Staff's disagreement with substantive issues and pro forma adjustments, which must be the subject of evidentiary hearings on the merits of those issues.

As I am sure you can appreciate, Arizona Water Company undertook many hundreds of man hours and incurred significant expense in preparing its Application, which in the interest of avoiding a stale test year, the Company filed as early as it was permitted to do so. As you know, the Application included several additional items, including a DSIC study and a report addressing water losses in the Pinal Valley Water System, as had been ordered by the Commission in the last rate case. Significantly, the Commission also directed Arizona Water Company not to file a general rate case application sooner than ninety days after it docketed the Commission-ordered Consolidation Study. That study was filed with the Commission on September 30, 2010, ninety days before this Application was filed. The Company worked diligently to complete all of the filings, and the Application complies in every respect with the Rule and the Appendices to the Rule. Arizona Water Company is entitled to have its Application for just and reasonable rates be processed, heard and decided by the Commission. It is completely unjustified and unreasonable for Staff to unilaterally conclude, without any support in the law or the record, that it simply "is unable to progress any further with regard to the sufficiency of your rate application."

The Staff's position also implicates other legal issues. If Staff's argument were accepted by the Commission, the Commission's actions would conflict with the Arizona Administrative Procedure Act ("APA"), A.R.S. §§ 41-1001 *et seq.*, by formulating and adopting a rule that implements agency policy without any required prior notice or public participation. Also, in Arizona Water Company's last Western Group rate filing, you may recall that Staff took the position that the Company was required to submit an inverted tiered rate design as a condition of sufficiency under the Rule (Docket No. W-01445A-04-0650; see Motion to Require Supplemental Sufficiency Information docketed September 24, 2004). After briefing and argument before ALJ Teena Wolfe, including her analysis of many of the

Mr. Steven M. Olea  
January 14, 2011  
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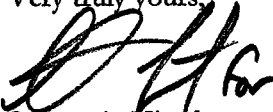
Bryan Cave LLP

issues set forth in this response letter, Staff's motion was summarily denied. *See* Rate Case Procedural Order Docketed November 15, 2004 in Docket No. W-01445A-04-0650. In that case, as in this case, the Staff argued that a substantive issue was a condition of sufficiency while the ALJ ruled it was actually an issue of fact to be decided by the Commission after evidentiary hearings.

By taking the position in your January 7 letter that the Company must withdraw its case by January 28 or the Staff will request that the docket be administratively closed, you have left the Company with no choice but to seek relief before ALJ Sarah Harpring unless the Staff reconsiders and withdraws its position. Under Section (B)(7) of the Rule, Staff has until January 28, 2011 to note deficiencies in Arizona Water Company's Application. If no such deficiencies are noted, Arizona Water Company will take the position that no such deficiencies in its filing exist.

For the reasons stated above, Arizona Water Company requests that the Staff proceed to complete its review within the Commission-required timelines under the Rule. Arizona Water Company further requests that you withdraw your January 7 letter. Please respond to the undersigned by the close of business on Wednesday, January 19, 2011 as to whether Staff will do so. Otherwise, Arizona Water Company will have no choice but to seek appropriate relief.

Very truly yours,



Steven A. Hirsch

SAH:car/ct

c: Docket Control Center  
Lyn Farmer, Hearing Division  
Delbert Smith, Engineering  
Connie Walczak, Consumer Services  
Janice Alward, Legal Division  
Elijah Abinah, Utilities Division  
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William M. Garfield, Arizona Water Company  
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